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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,307	06/02/2000	Rochelle B. Roth	RRTHP0102US	6714

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EXAMINER

KOO, BENJAMIN KIM

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/586,307

Applicant(s)

ROTH ET AL. CH

Examiner

Benjamin Koo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 16-25 is/are rejected.
- 7) ☒ Claim(s) 10-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 3, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Taheri '458. Taheri shows a massage device comprising: a garment (10), a plurality of bladders (A-D), an inflation assembly (Fig. 4), a notch (designated by 15 in Fig. 3), a pocket (designated by 62 in Fig. 1), a throttling device (75), hook and loop fasteners (44-46), and overlapping inflation and deflation (Fig. 5).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri alone. Taheri shows all the structural and functional limitations of the invention as set forth in the previous paragraphs of this office action, but does not explicitly show equal inflation volumes of all the bladders. However, such a limitation would first be considered an obvious choice of design, 3 of the 4 bladders are definitely of equal capacity, there is no reason why the capacity of 4th bladder could not be

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changed to suit various needs or applications. But secondly, the Examiner argues that Taheri does implicitly show equal capacities. Figs 5 and 6 display inflation over time. The magnitudes of all the values of inflation for all 4 bladders are equal, as well as the time periods of inflation. There is no indication in the reference that the inflation speed or acceleration is different for bladder 'A', therefore it can be inferred that the volume capacities would be approximately equal. Furthermore, limitations regarding variations of operation (zones=partial operation) are considered obvious design choices, well within the knowledge of a skilled artisan to suit various needs and applications.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri in view of Gelfund et al. '800. Taheri shows all the structural and functional limitations of the invention as set forth in the previous paragraphs of this office action except for the handles. Gelfund shows the use of a handle (20) in a pneumatic therapy device incorporating a bladder and velcro. It would have been obvious to have incorporated a handle because handles are old and well-known to provide convenience and portability for handling and providing a grip for removal in such devices.

6. Claims 9 and 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri in view of Tobler et al. '556. Taheri shows all the structural and functional limitations of the invention as set forth in the previous paragraphs of this office action except for the two ply construction. Tobler shows the garment being made of two opposed sheets in a highly analogous device. It would have been obvious to have fabricated Taheri using the type of construction demonstrated in Tobler because such construction is an old and well-known obvious art-recognized alternative means of

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construction. Limitations regarding choice of material are considered obvious design choices, well within the knowledge of a skilled artisan.

Allowable Subject Matter

7. Claims 10-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

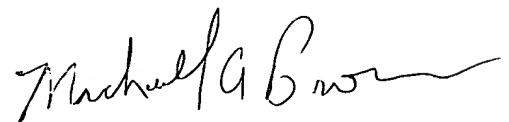
8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not show the necking seams as substantially claimed by the applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Koo whose telephone number is 703-308-2657. The examiner can normally be reached on M, W-F; 9:30-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman can be reached on 703-308-1310. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-746-4892 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

bk
January 14, 2002



Michael A. Brown
Primary Examiner